

SECOND AMENDMENT UNDER 37 C.F.R. § 1.111
U.S. Application No.: 09/866,610

REMARKS

Review and reconsideration on the merits are requested.

The claims now pending are claims 1-15 and 19-38.

Applicants follow the paragraphing of the Examiner.

Paragraph 1

The substitute specification is filed herewith. Any inconvenience to the Examiner is regretted.

Paragraph 2

The Examiner is correct regarding claims 11 and 17. Claim 11 is appropriately amended to attend to the typographical error. Claim 17 is canceled, but as the Examiner will see claims 16, 17 and 18 are rewritten to include five of the six members of the group recited in claims 1, 4 or 11 each recited in a dependent claim. All six members of the group are now used in claims 1, 4 and 11, it being noted that starch hydrolyzates needed to be added to claim 4.

Withdrawal is requested.

Paragraph 3

It is believed that claims 9-10 are now brought into proper form.

Withdrawal of the objection is requested.

Paragraph 4

Applicants appreciate the Examiner withdrawing the 112, second paragraph rejection of claims 7, 12 and 13.

SECOND AMENDMENT UNDER 37 C.F.R. § 1.111
U.S. Application No.: 09/866,610

Applicants now turn to the art rejections.

The prior art: JP 2 000 044878 (JP '878); U.S. Patent 5,376,391 Nisperos-Carriedo et al ('391 patent); U.S. Patent 4,125,630 Orthoefer (Orthoefer); U.S. Patent 4,511,592 Percel et al (Percel).

The rejections were set forth in Paragraphs 5 and 6 of the Action as follows:

Claims 1-8 and 12-17 were rejected under 35 U.S.C. § 103(a) as being unpatentable over JP '878 in view of the '391 Patent and Orthoefer. Paragraph 5 of the Action.

Claims 11 and 18 were rejected under 35 U.S.C. § 103(a) as being unpatentable over JP '878 in view of the '391 Patent and Orthoefer further in view of Percel. Paragraph 6 of the Action.

The Examiner's reading and application of the prior art is set forth in the Action and will not be repeated here except as necessary to understand Applicants' traversal, which is now presented.

(1) Combination of JP 200044878 with Nisperos-Carriedo (US 5,376,391) and Orthoefer (US 4,125,630)

Applicants agree that JP 200044878 describes that a yeast cell wall fraction is used for a coating agent, that the coating agent can be used for foodstuff, pharmaceuticals, etc., that the coating agent has very low oxygen permeability, not stickiness and controls an elution initiation time. However, Applicants submit that the skilled artisan would not combine the disclosure of plasticizer in the secondary references with JP '878.

SECOND AMENDMENT UNDER 37 C.F.R. § 1.111
U.S. Application No.: 09/866,610

The Examiner considers that Nisperos-Carriedo discloses a plasticizer. However, the Examiner is requested a note that Nisperos-Carriedo discloses coating of vegetables, fruits, fungi, etc. and the coating agent includes methylcellulose or the like. The coating disclosed in Nisperos-Carriedo is carried out for the purpose of preventing water vapor from leaving vegetables, etc. and for extending and maintaining shelf-life of vegetable, etc. during transportation and storage by using antioxidant such as BHA in the coating agent.

Nisperos-Carriedo merely discloses a coating agent and a method and effects thereof with respect to coating of vegetables, fruits and fungi. Nisperos-Carriedo does not teach or suggest the technique of the present invention, which prepares powders wherein a flavor is carried with gum arabic etc. and coating the powders with the claimed coating agent. Nisperos-Carriedo does not teach or suggest the effects of the present invention; that the deterioration of a flavor is prevented and that the flavor can be released when necessary. Moreover, for the appropriate release of a flavor, the present invention defines a ratio of the core substance to be coated (i.e., powdery flavor) and the coating agent. However, Nisperos-Carriedo discloses carnaba wax, soybean oil, etc. as plasticizer and merely discloses a ratio of a plasticizer and the other substances in the coating agent. Nisperos-Carriedo does not teach or suggest the amount of the coating agent.

Ortheofer discloses a process for manufacturing a meat-like product using plant protein. As the function of an edible plasticizer, Ortheofer discloses smoothness of the meat-like product, binding property of plant proteins, and maintenance of moisture. Although sugar alcohol and

SECOND AMENDMENT UNDER 37 C.F.R. § 1.111
U.S. Application No.: 09/866,610

polysaccharide may be cited as the plasticizer, Orthoefer does not teach or suggest the ratio of the coating agent.

Although the Examiner considers that the size of the substance to be coated is obvious to one skilled in the art, it is quite apparent there is a significant difference in size between the spray-dried product of gum arabic (30 to 3000 μm , one example of the present invention) and vegetables, fruits, or plant protein meat-like product of the secondary references. Thus, there is no motivation to derive the present invention from the references.

In addition, in view of the difference of technologies of the references as described above, there is no positive motivation to combine JP 200044878 with Nisperos-Carriedo and Orthoefer. Even assuming that these references could be combined, the combined content does not teach all of the elements of the present claims. In addition, Applicants submit that the combination of references is based on the knowledge after reading the present claims (hindsight). The Examiner merely search each of the elements in the present claims and combined the elements found. This is an impermissible hindsight rejection.

(2) Combination of JP 200044878 with Nisperos-Carriedo, Orthoefer and Percel (US 4,500,592).

The Examiner rejected the process claims by combining JP 200044878 with Nisperos-Carriedo, Orthoefer and further Parcell. Similar to the above Applicants submit that combination of so many references is based on a hindsight and is indicative of invention.

Although Nisperos-Carriedo disclose carnaba wax, soybean oil, etc. as a plasticizer, vegetables, fruits, fungi are directly coated. Accordingly, it is quite apparent that it is impossible

SECOND AMENDMENT UNDER 37 C.F.R. § 1.111
U.S. Application No.: 09/866,610

to use the fluidized-bed chamber as disclosed in Percel for the coating of Nisperos-Carriedo. For the method using a fluidized-bed chamber, a fluid such as air is flowed upward for floating of particles and a coating agent in the mist-like form is sprayed. In such a method, the substance to be coated is required to be small and light in weight.

It is noted that Nisperos-Carriedo discloses brushing, rolling, dripping, wiping, rubbing as the coating method.

On the other hand, although Orthoefer discloses sugar alcohol, polysaccharide, etc. as a plasticizer, it does not teach or suggest use of a plasticizer as a coating agent or use of a plasticizer together with a coating agent. Of course, Orthoefer does not teach or suggest a coating method.

Moreover, JP 200044878 does not teach or suggest a coating method. Even assuming that the coating agent of the present invention, in which a plasticizer is mixed, could be combined with the coating method of Percel, the coating agent should be mist-like and there is no reasonable expectation for successful coating by using fluidized-bed chamber. Such success was achieved by the present invention for the first time, and is not taught or suggested by JP 2000-44878 and Percel.

Applicants position set forth above concerning the rejection based on JP 200044878 Nisperos-Carriedo and Orthoefer also applies to the rejection based further in view of Percel.

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the

SECOND AMENDMENT UNDER 37 C.F.R. § 1.111
U.S. Application No.: 09/866,610

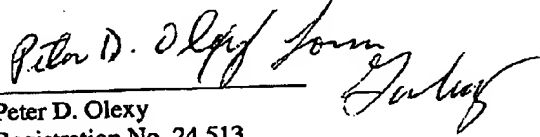
Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

SUGHRUE MION, PLLC
Telephone: (202) 293-7060
Facsimile: (202) 293-7860

WASHINGTON OFFICE
23373
CUSTOMER NUMBER


Peter D. Olexy
Registration No. 24,513

24835

Date: August 21, 2003